

PETITION UNDER 28 USC § 2241 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District Massachusetts
Name <b>Fernandez Santiago</b>	Prisoner No. <b>W-49715</b>	Case No. <b>Orig. Case 091145</b>
Place of Confinement <b>Pondville Correctional Center, PO Box 146, Norfolk MA 02056</b>		
Name of Petitioner (include name under which convicted) <b>Fernandez Santiago</b>		Name of Respondent (authorized person having custody of petitioner) <b>v. Superintendent Paul Ruane Pondville Correctional Center Massachusetts Dept. of Corrections</b>
The Attorney General of the State of: <b>Massachusetts</b>		

**PETITION**

1. Name and location of court which entered the judgment of conviction under attack  
**Superior Court Department, Suffolk County, 90 Devonshire St., Boston MA**

2. Date of judgment of conviction **Jan. 3, 1991**

3. Length of sentence **15 to 16 years**

4. Nature of offense involved (all counts)  
**Trafficking over 200 grams of cocaine  
and trafficking over 14 grams of cocaine**

5. What was your plea? (Check one)
 

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere

 If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:  
 \_\_\_\_\_  
 \_\_\_\_\_

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 

- (a) Jury
- (b) Judge only

7. Did you testify at the trial?  
Yes  No

8. Did you appeal from the judgment of conviction?  
Yes  No

9. If you filed appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court / Supreme Judicial Court
- (b) Result Conviction affirmed
- (c) Date of result and citation, if known February 3, 1993 - 34 Mass. App. Ct. 79
- (d) Grounds raised SEARCH AND SEIZURE - Probable cause, Exigent circumstances; PROBABLE CAUSE. CONSTITUTIONAL LAW - Search and seizure, Probable cause. PRACTICE. CRIMINAL. Severance. Instructions to jury, Disclosure of evidence.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

10. Did you file a petition for certiorari in the United States Supreme Court? \_\_\_\_\_ If "Yes," attach a copy of the petition and a copy of the briefs filed in the U.S. Supreme Court, or file a copy of the petition and a copy of the briefs filed in the U.S. Supreme Court with this office.

Yes  No

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes  No

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes  No

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes

No

Second petition, etc. Yes  No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

C. Ground three: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Ground four: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

THE DEFENDANT REQUESTS THIS HONORABLE COURT TO ALLOW HIM LEAVE TO RESERVE THE  
RIGHT TO COUNSEL; AND TO ALLOW COUNSEL  
THE RIGHT TO AMEND THIS WRIT.  
\_\_\_\_\_  
\_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: Ground Two above was not previously presented because it had not been raised as a valid constitutional issue by the U.S. Supreme Court until earlier in 2004.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes  No

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Roger A. Cox D. Ring Kelleher  
One Chestnut St., Arlington, MA

(b) At arraignment and plea Roger A. Cox D. Ring Kelleher  
One Chestnut St., Arlington, MA

(c) At trial

D. Ring Kelleher

One Chestnut Street, Arlington, MA 02474

(d) At sentencing

Roger A. Cox

(e) On appeal

Roger A. Cox

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BOSTON-MASS-02110

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes  No 

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes  No 

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes  No 

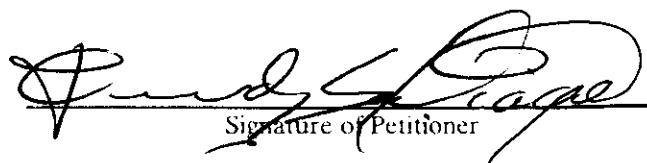
Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

8-28-04

(date)

  
\_\_\_\_\_  
Signature of Petitioner